The appeal is therefore dismissed.

No costs.

Appeal dismissed

Solicitors: *Lim Kean Chye & Co., V. Muthusamy & Co.*

CHE WIL v. MAHMOOD BIN ISMAIL

[A.C.J. (Mohamed Zahir J.) March 18, 1982]
[Kota Bharu – Civil Appeal No. 7 of 1981]

Road Traffic – Liability – Fatal road accident – Absence of lights – Breach of statutory rules – Whether breach evidence of negligence – Road Traffic Rules 1959, r. 35(1).

The respondent as representative of the deceased's estate claimed that the deceased was pedalling a trishaw towards the direction of Pasir Mas on the day of the accident. A witness saw the deceased carrying a torchlight in his hand and the torchlight was on. The trishaw had no lights but had two reflectors on each side of the rear wheels. The deceased was knocked down by a car driven by the appellant. The learned magistrate found the appellant liable and he appealed. He argued that the deceased had contravened Rule 35(1) of the Road Traffic Rules 1959.

Held, dismissing the appeal: (1) breach of the Rules is not in itself evidence of negligence on the part of the person concerned;

(2) the appellant in this case had no excuse to knock the trishaw from behind. He was wholly liable for the accident.

Cases referred to:

(1) *Clarke and wife* v. *Brims* [1947] K.B. 497.
(2) *Coote* v. *Stone* [1971] 1 W.L.R. 279.

CIVIL APPEAL.

Dato' H.L. Wrigglesworth for the appellant.
C. Jegathesan for the respondent.

Cur. Adv. Vult.

Mohamed Zahir J.: The appellant appealed to this court against the decision of the learned Magistrate. I dismissed the appeal. He now further appeals.

The case for the respondent was that the deceased was just before the accident at about 10.15 p.m. pedalling a trishaw towards the direction of Pasir Mas. PW1 heard the sound of collision and he turned to see a car knocking the trishaw driven by the deceased. He saw the deceased carry a torchlight in his hand and the torchlight was on. The trishaw had no lights but had two reflectors on each side of the rear wheels.

The evidence for the appellant was that he saw a trishaw in the middle of the road. Then the accident took place. The reason as to how the accident took place, as given by the appellant, was that at that time there was a car coming towards him and he could not see the trishaw earlier. He further stated at that time he could not see anything in front of him. He dimmed his light and he suddenly noticed the trishaw but it was already too late.

The learned Magistrate in his judgment referred to the brake marks of the appellant's car which was very close to the side table. He stated if the appellant was a careful driver he would not have driven close to the side road. The learned Magistrate further referred to the admission of the appellant in his evidence when he stated he could not see anything ahead of him.

The main reason for the appeal was that the deceased had contravened Rule 35 of the Road Traffic Rules 1959 which reads as follows:

"35. Between the times of sunset and sunrise vehicles, other than motor vehicles, shall in the case of –

(1) Every vehicle other than a bicycle carry two lighted lamps one on either side of the vehicle. The lamps shall exhibit a white light to the front in the direction in which the vehicle is proceeding or is intended to proceed and shall show the full width of the vehicle. These lights may be fitted with a red disc visible from the rear. If such lights are not fitted with red discs or if the red disc of either of the lights is obscured, the vehicle shall carry a lighted lamp on the off-side of the vehicle exhibiting a red light to the rear."

I am of the opinion however that breach of the Rules is not in itself evidence of negligence on the part of the person concerned. The question that has to be decided is who is negligent. The deceased might have contravened the said Rule 35 but was he to be blamed for the accident? Supposing it was a bicycle with reflectors being pedalled by the road side, one would have thought that the motorist would be equally blameable if he were to knock into the rear of the bicycle. The trishaw in this case had reflectors although it is slightly wider than a bicycle.

Further, in this case there was evidence that the deceased was carrying a lighted torch. Even if, for the sake of argument, he had no such light there was no excuse for the appellant to knock into him in the rear as the appellant's car is obliged under the law to be equipped with sufficient lights

to see what is ahead. The main question is why could not he see the trishaw at a distance within the range of his car's light as expected of him. He did not say he was dazzled by the light of the oncoming car. Even if he did, he should have stopped his car instead of driving on to the extent that, as admitted by him, " . . . at that time I could not see anything in front of me". He said he 'suddenly' saw the trishaw. Again the question is why he could not see it before it was too late.

As we study the sketch plan, there were brake marks on the left side of the road facing Pasir Mas. The direction of the brake marks was towards the middle from the left of the road. This would indicate the car was very close to the road edge before the application of the brakes since from J, the beginning of the brake marks to the left road edge is 1' 10". From J1, end of left brake mark to F2, the trishaw was 104 feet, denoting the distance even after the braking that the trishaw was pushed to. The glass splinters were from J1 up to the trishaw. From the sketch plan it appeared that the collision occurred on the left side of the road and not in the middle as stated by the appellant.

In *Clarke and wife* v. *Brims*[1] the defendant parked his car without the rear light on during the black-out during the last war and in consequence another vehicle ran into it and suffered damage. The question decided in the case was whether a breach of statutory duty under the provisions of Road Transport Lighting Act 1927 gave rise to a civil action. It was held that the Act imposed public duty only and did not in addition impose duties enforceable by any individuals aggrieved (see page 505).

In *Coote* v. *Stone*[2] it was held that a breach of Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963 did not give rise to a civil remedy to a person injured thereby. In this case the defendant parked his car in contravention of the Order 1963 and the plaintiff's car collided into the rear of the defendant's car. Davies L.J. at page 283 stated as follows:

"It seems to me that the clearway regulation is not, primarily at any rate, designed to give a civil remedy to a person injured by a breach of it. A fine can be imposed, of course, as I have said, but it is a public duty that is enacted, and I cannot see that it gives rise to any private liability."

The appellant had no excuse to knock the trishaw from behind. He was, in my opinion, wholly liable for the accident. There was no argument on the quantum before me. As such I leave it as was decided by the learned Magistrate.

As such I dismiss his appeal.

Appeal dismissed.

Solicitors: *Wrigglesworth & Co.; Jegathesan & Co.*

THAM MENG FATT v. UTAM SINGH OMNIBUS CO. LTD

[O.C.J. (Ajaib Singh J.) March 23, 1982]
[Seremban – Civil Suit No. 42 of 1974]

Damages – Motor accident – Infant fell from moving bus – Death occurred 9 years after accident – Several items added for special damages – Objections overruled.

Limitation – Special damages – Writ amended after limitation period.

The plaintiff infant sued the defendant through his father and next friend for damages arising out of a motor accident. The infant was 7 years old at the time of the accident and some 9 years later he died from the injuries he had received. The writ was consequently amended with the father stepping in as the administrator of the estate of the deceased infant. The Statement of Claim was amended to include several items for special damages which were not in the original claim. The High Court overruled the defendants' objection to the amendments and allowed it.

The facts revealed that the infant was boarding the defendants' motor bus when it moved causing the infant to fall and suffer serious injury.

Held: (1) the plaintiff had proved his case and the defendants were wholly liable for the accident and the consequent injuries suffered by him;

(2) the writ had been filed within time limit and the amendments were merely the items in respect of special damages which the plaintiff had incurred and would not be caught under the Limitation Act although the items were added after the limitation period;

(3) the plaintiff was awarded $65,000 for pain and suffering; and special damages comprising $2,000 for nursing, $750 for nourishing food, $15 for clothes, $35 for bag and books and $1,500 for transport expenses. Funeral expenses and the cost of extracting letters of administration were agreed at $1,250 and $350 respectively. No award was made for future earnings as there was insufficient evidence to do so.

CIVIL SUIT.

S. Kanagasabapathi for the plaintiff.
N.A. Marjoribanks for the defendants.

Cur. Adv. Vult.